

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

Disposition of Claims

Claims 1-55 are pending in this application. Claims 3-20, 24-39 and 43-55 are withdrawn from consideration. Claim 1 has been amended to recite that elevation occurs in a direction substantially parallel to the medial column of the foot. Claims 21 and 40 have been amended to include the limitation that elevation occurs relative to a first metatarsal. Support for these amendments may be found at least in Figs. 15-17 of the application as filed.

Objections

Figure 1 has been objected to for lacking a legend designating it as prior art. Figure 1 has been amended in this reply in response to this objection. Withdrawal of this objection is respectfully requested.

Rejections under 35 U.S.C § 103

Claims 1-2 and 40-42 stand rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent No. 6,412,198, issued to Rothbart. To the extent that this rejection applies to the amended claims, it is respectfully traversed.

Amended claim 1 recites an orthopedic appliance comprising a first upper surface

disposed between an apex and a first end, and a second upper surface disposed between an apex and a second end, wherein the first upper surface is disposed at an angle of inclination relative to the lower planar surface in a direction substantially parallel to the medial column of the foot. An advantage of such a configuration is that the proximal phalanx is elevated with respect to a first metatarsal. In contrast, Rothbart discloses a forefoot support surface having a laterally decreasing thickness from the inner edge 62 to the outer edge 64 (Col. 6, ll. 40-58). Inclination of the Rothbart device occurs in a direction substantially across the medial column of the foot, in contrast to the instant device which has an angle of inclination that is substantially parallel to the medial column of the foot. Accordingly, Rothbart neither discloses nor suggests an angle of inclination that occurs in a direction substantially parallel to the medial column of the foot, as required by amended claim 1. Therefore, withdrawal of this rejection with respect to claim 1, as well as claim 2 which depends from claim 1, is respectfully requested.

Claim 40, as amended, recites a method for improving stability of the foot comprising providing a wedge having a first and second upper surface, and elevating a proximal phalanx relative to a first metatarsal. In contrast, Rothbart discloses a forefoot support system extending from the hallux to just proximal to (past) the first metatarsal head (Col. 6, ll. 24-25). Accordingly, the forefoot support system according to Rothbart elevates the medial column of the forefoot relative to the remainder of the forefoot (i.e. the angle of inclination according to Rothbart is across the foot as indicated by the fact that the Rothbart device “does not significantly elevate the phalanges 47 of the second toe” (Col. 6, ll. 41-42) while supporting the medial column of the forefoot in an elevated

position relative to the remainder of the forefoot (Col. 6, ll. 57-58). Thus, Rothbart supports the entire medial column relative to the rest of the forefoot (i.e. inclination is across the foot), in contrast to the support method of claim 40 that supports a proximal phalanx relative to a first metatarsal (i.e. inclination is parallel to the foot). In view of these distinctions, claim 40, and claims 41-42 which depend from claim 40, are patently distinct over Rothbart. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 21-23 stand rejected under 35 § 103 as obvious over Rothbart. To the extent this rejection applies to the amended claims, it is respectfully traversed.

Claim 21, as amended, recites an apparatus for orthopedic treatment comprising a support which maintains the proximal phalanx at an angle of inclination relative to a first metatarsal. As previously discussed with regard to claim 40, above, Rothbart discloses a forefoot support system extending from the hallux to just proximal to (past) the first metatarsal head (See Col. 6, ll. 24-25). Accordingly, the forefoot support system elevates the medial column of the forefoot relative to the remainder of the forefoot. Thus, Rothbart supports the entire medial column relative to the rest of the forefoot, in contrast to the support method of claim 21 that supports a proximal phalanx relative to a first metatarsal. For at least this reason, claim 21 is patentable over Rothbart. Claims 22-23, which depend from claim 21, are similarly patentable. Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

Applicant believes this reply to be fully responsive to all outstanding issues and place this application in condition for allowance. If this belief is incorrect, or other issues arise, do not hesitate to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 09166.002002).

Respectfully submitted,

Date: 5/18/03



Jonathan P. Osha, Reg. No. 33,986
ROSENTHAL & OSHA L.L.P.
1221 McKinney, Suite 2800
Houston, Texas 77010
Telephone: (713) 228-8600
Facsimile: (713) 228-8778

53787_2